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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

PECEIVER OCT 13 1998 FEDERAL COMMUNICATIONS COMMISSION In the Matter of Carriage of the Transmissions of Digital **CS Docket No. 98-120** Television Broadcast Stations, Amendments) to Part 76 of the Commission's Rules

To: The Commission

COMMENTS OF THE TRINITY BROADCASTING NETWORK

The Trinity Broadcasting Network, a national group owner offering religious, inspirational and family-oriented programing, by its undersigned counsel, hereby submits the following Comments in connection with the captioned proceeding. This proceeding was initiated by the Commission with the release of its July 10, 1998 Notice of Proposed Rulemaking, FCC 98-153 ("NPRM").

I. INTRODUCTION AND OVERVIEW

A. **Background on the Trinity Broadcasting Network**

The Trinity Broadcasting Network ("Trinity") and its affiliated interlocking non-1. profit companies, own and operate television stations: KPAZ-TV, Phoenix, Arizona; WHFT-TV, Miami, Florida; WDLI-TV, Canton, Ohio; WHSG-TV, Monroe, Georgia; KTBN-TV, Santa Ana, California; WCLJ-TV, Bloomington, Indiana; WKOI-TV, Richmond, Indiana; WTBY-TV, Poughkeepsie, New York; KTBO-TV, Oklahoma City, Oklahoma; KDTX-TV, Dallas, Texas; No. of Copies rec'd and KTBW-TV, Tacoma, Washington.¹

List ABCDE

^{1/} Trinity's interlocking affiliated non-profit companies are: Trinity Broadcasting of Arizona, Inc.; Trinity Broadcasting of Florida, Inc.; Trinity Broadcasting of Indiana, Inc.; Trinity Broadcasting of New York, Inc., Trinity Broadcasting of Oklahoma City, Inc.; Trinity Broadcasting of Texas, Inc.; and Trinity Broadcasting of Washington.

- 2. Trinity is rated by the Neilsen Company as the most popular and most viewed religious and inspirational service in the nation. Trinity has been providing a wholesome family program service for 25 years, and its commitment and level of service in each of the communities where it is licensed has been significant and meritorious.
- 3. Each Trinity facility also provides an exceptional level of quality children's programming. The average Trinity facility broadcasts no less than ten hours per week of children's programming. In addition, Trinity provides unique community services such as its "His Hand Extended" program which provides direct material assistance to disadvantaged and needy individuals and families. Trinity also maintains a 24-hour per day prayer line where people can call when they are, *inter alia*, in distress, in need, or seeking a referral to local community services, religious organizations and churches which can be of assistance to them. The continued and expanding availability of the important public service provided by Trinity is manifest. As explained below, Trinity believes the Commission should provide for mandatory carriage of the free over-the-air digital television services provided by existing analog television licensees or permittees. On the other hand, those services which may be offered by licensees or permittees for a fee or on a subscription basis should not, at least through the digital transition period ending in 2006, be included within the mandatory carriage obligations of cable systems.

B. <u>Digital Broadcast Signal Carriage Issues</u>

4. The NPRM notes that the mandatory broadcast signal carriage rules were specified by Congress in the Cable Television and Consumer Protection and Competition Act of 1992, sections 614 and 615, P.L. No. 102-385, 106 Stat. 1460 (codified at 47 U.S.C § 521,

Neilsen Net Weekly Circulation Report, May 1998.

et. seq.) ("the Cable Act"). Sections 614 and 615 of the Cable Act contain the cable television mandatory carriage or "must carry" requirements for commercial and noncommercial television stations, respectively. Within local television market areas, commercial television stations elect cable carriage under either the re-transmission consent (47 U.S.C. § 325) or mandatory carriage rules. Noncommercial television stations may only elect must carry under the Communications Act (47 U.S.C. § 535).

- 5. In its Fourth Report and Order in MM Docket No. 87-268, 11 FCC Rcd. 17771 (1996), the Commission adopted rules establishing a transitional process for the conversion of television broadcasting from the analog to the digital form of transmission. Under the rules each existing analog television licensee or permittee is eligible to apply for a new digital "paired" channel with 6 MHZ of spectrum. Fifth Report and Order in MM Docket No. 87-268, 12 FCC Rcd. 12809 (1997); reconsideration, FCC 98-23, ___ CR __ (Released February 23, 1998). The new digital station has the flexibility to broadcast in a high definition mode, using virtually all of the 6 MHZ of spectrum, or in a multiple channel mode. The Fifth Report and Order, 12 FCC Rcd. at 12832, provides a staggered transition schedule where both the analog and the digital television signals will be broadcast.^{3/}
- 6. The key issue for broadcasters during this analog to digital transition period is the extent to which cable systems will be obligated to carry the digital signal of broadcasters. Trinity will focus its remarks on this issue. Trinity fears that anything less than an all-channel carriage

Commencing April 1, 2003 digital broadcast television services must simulcast at least 50% of the video programming of the paired analog channel; by April 1, 2004 there is a 75% simulcast requirement; and by April 1, 2005 there is a 100% simulcast requirement until the analog channel is terminated and the frequency returned to the Commission. <u>Id.</u>

requirement for the free-over-the air digital service(s), as well as the current analog service, would greatly facilitate consumer acceptance of the new and expensive digital technology. For this primary reason, and to ensure the fair and most orderly transition to digital television throughout the nation, with the return of the analog frequencies for other public interest uses, Trinity believes cable systems must be required to participate in the process, and carry the free over-the-air digital service(s) offered by the nation's television broadcast industry.

II. TURNER II AND THE PUBLIC INTEREST STRONGLY SUPPORT THE MANDATORY CARRIAGE OF DIGITAL TELEVISION

7. The U.S. Supreme Court in <u>Turner Broadcasting System, Inc. v FCC</u>, 117 S.Ct. 1174, 1186 (1997) ("<u>Turner II</u>"),⁴ outline three broad justifications for the Cable Act's must carry requirements:

Must carry was designed to serve three interrelated interests: (1) preserving the benefits of free, over the air local broadcast television, (2) promoting the wide spread dissemination of information from a multiplicity of sources; and (3) promoting fair competition in the market for television programming. We . . . now reaffirm, that each of those is an important governmental interest.

(Citations and internal quotation marks are omitted).

8. The need for must carry, and the underlying rationale, remain regardless of the type of signal (digital or analog) delivering the programming. While Congress has given the Commission "broad authority to define the scope of cable operated signal carriage requirements during the period of change from analog to digital broadcasting," NPRM at ¶ 13, the obligations

In <u>Turner Broadcasting System</u>, Inc. v. FCC, 114 S.Ct 2445 (1994) ("<u>Turner I</u>"), the court ruled that the must carry provisions were content neutral and served the important government interest of, among other things, preserving free broadcast television for those who could not afford cable service. Obligating the nation's cable systems to continue helping to fulfill such important governmental goals remains, and supports the implementation of digital must carry obligations as well.

of the Commission to preserve the benefits of free broadcast television, to promote the widest possible dissemination of information from the greatest number of sources, and to promote fair competition in the market for television programming persists. These sustaining obligations, along with the mandate that free over-the-air television broadcasters invest the millions of dollars necessary to first construct a parallel digital broadcast plant, and, second, to continue offering free analog service, underscore the fairness, and need for digital must carry.

9. Moreover, the court in <u>Turner II</u> noted that: "We have been most explicit in holding that protecting non-cable households from loss of regular television broadcasting service due to competition from cable systems is an important federal interest." 117 S.Ct at 1186 (citations and internal quotation mark omitted). Meeting the "important federal interest" of protecting non-cable households clearly requires some level of mandatory carriage of digital television by cable systems. While Trinity ultimately believes the nation's cable systems should be obligated, as are all television broadcast operators, to make the investment necessary to fully bring the country's communications services into the digital age, it is here proposing a compromise similar to the "phase-in proposal" outlined in the NPRM at ¶ 46.

III. A MODIFIED PHASE-IN PROPOSAL

10. The Commission's initial phase-in proposal suggested requiring carriage of some digital TV stations as they go on the air, but to avoid unnecessary dislocation of existing cable channels, a cable system's responsibility for carriage would be limited to a maximum number of new stations during either a one year or six month time period. During the transition time period, three to five new cable channels would have to be added every year or every six month.

- analog to digital--commencing April 1, 2003 digital broadcast services must simulcast at least 50% of the video programming transmitted on the analog channel, and by April 1, 2005 a 100% simulcast requirement--a similar phase-in with regard to mandatory carriage by cable systems is imminently reasonable. Creating a gradual phase-in for digital must carry which tracks the simulcast change from analog to digital would serve the "important federal purpose" that non-cable households do not suffer "from [a] loss of regular television broadcast service." Indeed, it makes little sense to believe that the nation can successfully transition from analog to digital services without the full participation of the nation's cable systems. It makes even less sense to allow the change-over from analog to digital to be interrupted because cable systems are not participating. For this reason Trinity proposes a phase-in where mandatory carriage is necessary for each free over-the-air service provided by a television station as it becomes available, but no mandatory carriage for any subscription, scrambled or pay service the station may offer.
- 12. Without providing continuing access to the 60% of the American households⁵/
 that only have cable, and which broadcasters can not otherwise reach, there is no way
 broadcasters will be able to successfully convert to an all digital operation. The FCC has long
 recognized such an inevitable deterioration without must carry:

The government's assertion that 'the economic health of local broadcasting is in genuine jeopardy and in need of the protections afforded by must carry,' rest on two component prepositions: first, 'significant numbers of broadcast stations will be refused carriage on cable systems' absent must carry. Second, 'the broadcast stations denied carried will either deteriorate to a substantial degree or fail all together.

⁵/ Turner II, 117 S.Ct act 1190.

Turner II, 117 S.Ct. at 1189 (internal citations to the record omitted).

- The <u>Turner II</u> court had "no difficulty in finding a substantial basis to support Congress' conclusion that a real threat justified enactment of the must carry provisions." <u>Id.</u> at 1190. The same rationale applies for the carriage of digital television. In fact, given the cost of maintaining dual broadcast plants, one for analog and one for digital, cost are not only dramatically increased, but so is the risk of failure for the nation's free over the air television services.
- 14. Importantly, Congress and the Supreme Court also found that must carry was necessary to control cable operators as the gate keepers to the economic viability of free broadcasting:

The harm Congress feared was that stations dropped or denied carriage would be at a 'serious risk of financial difficulty,' and 'would deteriorate to substantial degree or fail altogether.' Congress had before it substantial evidence to support its conclusion.

Id. at 1194 (internal citations to the record omitted).

- 15. As logic would dictate, the financial difficulties encountered by must carry broadcasters without must carry are not ameliorated by virtue of a change over from analog to digital broadcasting. Indeed, these risks and difficulties are compounded. Accordingly, there can be little question that cable must be required to participate at this sensitive time in the transition of the nation's broadcast television service.
- 16. In establishing priority for digital must carry, stations would not, of course, be relieved of their statutory obligations under sections 614 and 615 of the Cable Act. Those obligation would remain, regardless of the number digital broadcast stations in any given market.

This means that at a minimum a station's analog service would remain as a full must carry facility, and have priority in connection with fulfilling a cable systems one-third channel capacity set aside requirement. As stations in the market initiate digital service, they would be entitled to digital must carry for the free over-the-air services they provide. Once such carriage begins, even if subsequent facilities came on line, the cable system should not be permitted to drop one digital service for another. To do so would impermissibly empower the cable systems to use their gate keeping authority to decide what digital services would be available at all. Cable systems should not be given that power, so once a digital service is on the air and is carried under the phase-in proposal, subsequent digital services could not be used as a rationale for discontinuing carriage of any free digital service. Ultimately, however, this should not be an issue since the very purpose of the phase-in proposal is to gradually require cable systems to expand their channel capacity to accommodate the new digital services as soon as possible, and certainly in line with the conversion mandate broadcasters must adhere to. As such a channel expansion continues, it will not take long before all cable systems are able to carry the new digital television services in their areas.⁶/

IV. CONCLUSION

17. The nation's cable systems need to participate fully in the transition of the nation's communications services from analog to digital. Being required to carry the free overthe-air digital service(s) of the television broadcast stations in its market will aid the nation's transition from analog to digital communications. Moreover, since broadcasters have been

The standards for must carry would remain consistent with the Commission's current must carry requirements. 47 CFR §§ 76.54 and 76.56.

required to underwrite the significant expense of developing dual transmission facilities, one digital and one analog, and to operate both at least through 2006, cable systems must be required to do their part as well. Only by mandating carriage of all free digital broadcast signals, on a phased-in basis as the broadcast signals come online, will fairly ensure cable systems do their part.

18. Accordingly, the Commission should adopt mandatory carriage requirements for digital broadcasting consistent with the phase-in proposal, as discussed above.

Respectfully submitted,

TRINITY CHRISTIAN CENTER OF SANTA ANA, INC., D/B/A TRINITY BROADCASTING TETWORK

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